

2181CV01178 Trainor, Gordon vs. Michaels Stores, Inc.

• Case Type:
 • Torts
 • Case Status:
 • Open
 • File Date
 • 05/26/2021
 • DCM Track:
 • F - Fast Track
 • Initiating Action:
 • Personal Injury - Slip & Fall
 • Status Date:
 • 05/26/2021
 • Case Judge:
 •
 • Next Event:

[All Information](#) |
 [Party](#) |
 [Tickler](#) |
 [Docket](#) |
 [Disposition](#)

Party Information

Trainor, Gordon
- Plaintiff

Alias

Party Attorney

- Attorney
- Moynihan, Jr., Esq., Daniel J
- Bar Code
- 546346
- Address
- Law Office of Daniel J Moynihan
- 271 Main St
- Suite 302
- Stoneham, MA 02180
- Phone Number
- (781)438-8800
- Attorney
- Russell, Esq., Mark A
- Bar Code
- 568943
- Address
- The Law Office of Daniel J. Moynihan, P.C.
- 271 Main St Suite 302
- Stoneham, MA 02180
- Phone Number
- (781)438-8800

[More Party Information](#)

Michaels Stores, Inc.
- Defendant

Alias

Party Attorney

- Attorney
- Dickman, Esq., Michael P
- Bar Code
- 703367
- Address
- Melick and Porter, LLP
- One Liberty Square
- Boston, MA 02109
- Phone Number
- (617)502-9704

[More Party Information](#)

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	05/26/2021	08/24/2021	90	
Answer	05/26/2021	09/23/2021	120	
Rule 12/19/20 Served By	05/26/2021	09/23/2021	120	
Rule 12/19/20 Filed By	05/26/2021	10/25/2021	152	
Rule 12/19/20 Heard By	05/26/2021	11/22/2021	180	
Rule 15 Served By	05/26/2021	09/23/2021	120	
Rule 15 Filed By	05/26/2021	10/25/2021	152	
Rule 15 Heard By	05/26/2021	11/22/2021	180	
Discovery	05/26/2021	03/22/2022	300	
Rule 56 Served By	05/26/2021	04/21/2022	330	
Rule 56 Filed By	05/26/2021	05/23/2022	362	
Final Pre-Trial Conference	05/26/2021	09/19/2022	481	
Judgment	05/26/2021	05/26/2023	730	

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/26/2021	Attorney appearance On this date Daniel J Moynihan, Jr., Esq. added for Plaintiff Gordon Trainor		
05/26/2021	Attorney appearance On this date Mark A Russell, Esq. added for Plaintiff Gordon Trainor		
05/26/2021	Case assigned to: DCM Track F - Fast Track was added on 05/26/2021		Image
05/26/2021	Original civil complaint filed.	1	Image
05/26/2021	Civil action cover sheet filed.	2	Image
05/26/2021	Demand for jury trial entered.		
08/05/2021	Service Returned for Defendant Michaels Stores, Inc.: Service through person in charge / agent; Bernardo Marines, on 7/27/21, at 84 State Street, Boston, MA 02109	3	Image
08/16/2021	Attorney appearance electronically filed.		Image
08/16/2021	Answer to original complaint	4	Image

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
08/16/2021	Attorney appearance On this date Michael P Dickman, Esq. added for Defendant Michaels Stores, Inc.		Image

Case Disposition		
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Pending		

Commonwealth of Massachusetts

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 21-1178Gordon Trainor, PLAINTIFF(S),v. Michaels Stores Inc., DEFENDANT(S)

SUMMONS


THIS SUMMONS IS DIRECTED TO: Corporate Service Co MICHAEL'S STORE INC.
84 State Street (Defendant's name)
Boston MA

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Middlesex Sup Ct Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**
Woburn Division

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**
2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court **and** mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
 - a. Filing your **signed original** response with the Clerk's Office for Civil Business, Middlesex Superior Court, 200 Trade Center, Woburn MA 01801 (address), by mail or in person, **AND**
 - b. Delivering or mailing a **copy** of your response to the Plaintiff's Attorney/Plaintiff at the following address: Law Office of Daniel J. Magallon PC, 271 Main St, Suite 302, Stoughton MA 0218
3. **What to include in your response.** An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "Motion to Dismiss," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under **Mass. R. Civ. P. 12**. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov/courts/case-legal-res/rules-of-court.

4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
5. **Required information on all filings:** The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Judith Fabricant, Chief Justice on 07/27, 2021



Michael A. Sullivan
Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

PROOF OF SERVICE OF PROCESS

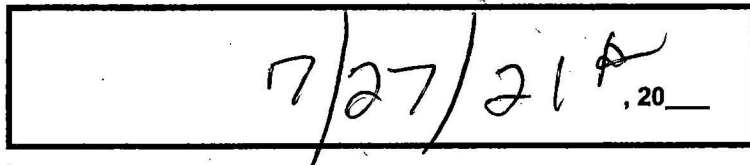
I hereby certify that on _____, 20____, I served a copy of this summons, together with a copy of the complaint in this action, on the defendant named in this summons, in the following manner (See Mass. R. Civ. P. 4(d)(1-5)):

Dated: _____, 20____

Signature: _____

N.B. TO PROCESS SERVER:

PLEASE ENTER THE DATE THAT YOU MADE SERVICE ON THE DEFENDANT IN THIS BOX - BOTH ON THE ORIGINAL SUMMONS AND ON THE COPY OF THE SUMMONS SERVED ON THE DEFENDANT.


7/27/21, 20____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX,ss

SUPERIOR COURT DEPT.

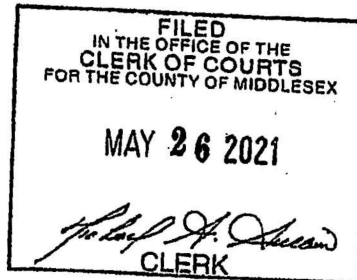
C.A.#: 21-1178

GORDON TRAINOR,
PLAINTIFF

v.

MICHAELS STORES, INC.,
DEFENDANTS

COMPLAINT



PARTIES

1. The Plaintiff, Gordon Trainor, is an individual with a residence of 54 Mill Street, Apt. 7, Woburn, Middlesex County, Massachusetts.
2. The Defendant, Michaels Stores, Inc. is, upon information and belief, a duly organized Foreign Corporation in the Commonwealth of Massachusetts with a principal place of business at 3939 W John Carpenter Frwy, Irving, TX with a registered Agent identified as Corporation Service Company, 84 State Street, Boston, MA.
3. The Defendant, Michaels Stores, Inc., is engaged in business at Michaels of Stoneham, Redstone Shopping Center, 119 Main Street. Ste 1, Stoneham, MA 02180.

JURISDICTION / VENUE

4. Jurisdiction is appropriate pursuant to the applicable Massachusetts Statutes regarding subject matter and jurisdictional limits on damages.
5. Venue is appropriate as the Plaintiff resides in Middlesex County.

FACTUAL ALLEGATIONS

6. Plaintiff's incorporate by reference paragraphs 1 – 5 of this Complaint herein.

7. Now comes the Plaintiff, in the above-entitled matter and says that on or about June 29, 2019, in the late afternoon, he entered the Defendant's business identified as Michaels of Stoneham located at 119 Main Street, Ste. 1, in Stoneham, Massachusetts, as a customer to pick up a picture he had framed at Defendant's business.
8. On said date, the general area of the business was experiencing a rain storm, which had the effect of water accumulating inside the store on the tile adjacent to the entry way.
9. The Plaintiff entered the entry way of Michaels through the first set of doors and proceeded to walk with due care and caution across a wet carpet and walked through the second set of entry doors and upon entering the Defendant's shopping area, the Plaintiff stepped off the carpet and onto the tile floor which was wet and slippery.
10. The Defendant made no effort to provide a warning to customers nor did they attempt to keep the floor dry and, as a result, the Plaintiff's feet slipped from underneath him and he fell with the full force of his body weight onto his right side causing serious injuries to his person.

COUNT I - NEGLIGENCE

11. Plaintiff incorporates by reference paragraphs 1 – 10 of this Complaint herein.
12. At all relevant times, the Defendant Owners and their agents negligently permitted their floor to become wet and slippery, failed to keep the area dry, provide a warning to customers of the apparent danger and assumed responsibility for the wet and slippery conditions of their floor while sacrificing a safe pathway for customers, including the Plaintiff.
13. On or about June 29, 2019, the Defendant Owners and their agents negligently caused or allowed a dangerous condition, specifically when the tile entry way to their arts and crafts store became wet and slippery it was a dangerous hazard to any customer.
14. As a direct and proximate result of the negligence of Defendant Owners and their agents, on June 29, 2019 the Plaintiff was caused to slip on the hazardous and neglected tile entry way of the Michaels store in Stoneham and he sustained severe personal injuries, pain and suffering, and medical expenses;

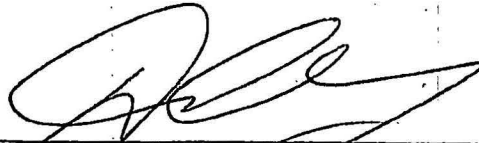
COUNT II – Violation of the Massachusetts Building Code by all Defendants

15. Plaintiff incorporates by reference paragraphs 1 - 14 of this Complaint herein.

16. The Defendant Owners failed to maintain their building in a safe, operable and sanitary condition and assumed liability when the Defendant Owners and their agents negligently maintained the premises in a safe manner wherein they allowed a water hazard to accumulate at the front entrance creating a certain risk of slipping by patrons.
17. The Defendant Owners caused an unsafe, hazardous entry way in violation of the Massachusetts Building Codes under M.G.L. 143, Section 51.
18. As a direct and proximate result of the Defendant Owners causing the unsafe, hazardous entry way in violation of said building codes, the Defendant Owners are strictly liable for the severe injuries, pain and suffering, and medical expenses of the Plaintiff.

WHEREFORE, the Plaintiff, Gordon Trainor, demands a judgment against the Defendant, Michaels of Stoneham, together with interest, costs and for whatever other further relief this Honorable Court deems fair and just.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS OF HIS COMPLAINT.



Daniel J. Moynihan, Jr. (BBO# 546346)
Mark A. Russell (BBO# 568943)
Law Office of Daniel J. Moynihan, P.C.
271 Main Street, Suite 302
Stoneham, MA 02180
(781) 438-8800
moynihanlaw@verizon.net

DATED: May 26, 2021

CIVIL ACTION COVER SHEET		DOCKET NUMBER	Trial Court of Massachusetts The Superior Court	
PLAINTIFF(S): Gordon Trainor ADDRESS: 54 Mill Street, Apt. 7, Woburn, MA 01801			COUNTY Middlesex	
ATTORNEY: Daniel J. Moynihan ADDRESS: 271 Main Street, Suite 302, Stoneham, MA 02180			DEFENDANT(S): Michaels Stores, Inc. 3939 W John Carpenter Frwy, Irving, TX 75063 (Agent) Corporation Service Co., 84 State St., Boston, MA 02109 (dba local store) Michaels of Stoneham, 119 Main Street, Suite 1, Stoneham, MA 02180	
BBO: 546346				
TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)				
CODE NO. B20	TYPE OF ACTION (specify) Personal Injury - Slip & Fall	TRACK F	HAS A JURY CLAIM BEEN MADE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
*If "Other" please describe:				
<div style="display: flex; justify-content: space-between;"> <div> Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO </div> <div> Is this a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO </div> </div>				
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.				
TORT CLAIMS (attach additional sheets as necessary)				
A. Documented medical expenses to date:				
1. Total hospital expenses			\$68,454.03	
2. Total doctor expenses			\$	
3. Total chiropractic expenses			\$	
4. Total physical therapy expenses			\$7,014.34	
5. Total other expenses (describe below)			\$75,468.37	
ambulance expenses			Subtotal (A):	
B. Documented lost wages and compensation to date			\$	
C. Documented property damages to date			\$	
D. Reasonably anticipated future medical and hospital expenses			\$	
E. Reasonably anticipated lost wages			\$	
F. Other documented items of damages (describe below)			\$300,000.00	
pain and suffering				
G. Briefly describe plaintiff's injury, including the nature and extent of injury: multiple fractured ribs and a collapsed lung			TOTAL (A-F): \$375,468.37	
CONTRACT CLAIMS (attach additional sheets as necessary)				
<input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a). Provide a detailed description of claim(s):				
Signature of Attorney/ Unrepresented Plaintiff: X			TOTAL: \$	
			Date: 4/28/21	
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.				
CERTIFICATION PURSUANT TO SJC RULE 1:18				
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.				
Signature of Attorney of Record: X			Date: 4/28/21	

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT

GORDON TRAINOR,

Plaintiff,

vs.

MICHAELS STORES, INC.,

Defendants.

8/16/2021

RECEIVED

C.A. No. 2131CV01178

DEFENDANT MICHAELS STORES, INC.'S ANSWER TO COMPLAINT

Pursuant to Rules 8 and 12 of the Massachusetts Rules of Civil Procedure, Defendant Michaels Stores, Inc. ("Defendant"), by and through the undersigned counsel, hereby submits its Answer to Complaint in the above-captioned action.

PARTIES

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore calls upon Plaintiff to prove the same.
2. Admitted.
3. Admitted.

JURISDICTION / VENUE

4. This paragraph calls for conclusion of law and therefore no response is required.
5. This paragraph calls for conclusion of law and therefore no response is required.

AJ

FACTUAL ALLEGATIONS

6. Defendant incorporates by reference its Answer to paragraphs 1 through 5 as if fully set forth herein.
7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore calls upon Plaintiff to prove the same.
8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore calls upon Plaintiff to prove the same.
9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore calls upon Plaintiff to prove the same.
10. Denied.

COUNT I Negligence

11. Defendant incorporates by reference its Answer to paragraphs 1 through 10 as if fully set forth herein.
12. Denied.
13. Denied.
14. Denied.

COUNT II Violation of the Massachusetts Building Code by all Defendants

15. Defendant incorporates by reference its Answer to paragraphs 1 through 14 as if fully set forth herein.
16. Denied.
17. To the extent this paragraph calls for a conclusion of law, no response is required. To the extent a response is required, denied.
18. To the extent this paragraph calls for a conclusion of law, no response is required. To the extent a response is required, denied.

WHEREFORE, Defendant requests that the Court enter judgment in its favor and against Plaintiff, as well as fees, costs, and such further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant states that the Plaintiff has failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant states that Plaintiff's claims are barred in whole or in part because Plaintiff's injuries arose out of or were the result of the negligent acts or omissions of another party for which the Defendant has no responsibility or control.

THIRD AFFIRMATIVE DEFENSE

Defendant states that Plaintiff's claims are barred in whole or in part and/or the Plaintiff's damages should be reduced because of Plaintiff's own negligence. Accordingly, the doctrines of comparative and/or contributory negligence preclude or limit Plaintiff's claims and/or recovery of damages.

FOURTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiff's claims are barred in whole or in part because of untimely notice to the Defendant.

FIFTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiff's claims are barred in whole or in part due to waiver and estoppel.

SIXTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiff's claims are barred in whole or in part because the condition alleged in the complaint was open and obvious, de minimis, and/or transitory.

JURY DEMAND

The Defendant claims a jury on all claims, defenses and issues so triable.

DEFENDANTS
MICHAELS STORES, INC.
By its attorney,

/s/Michael P. Dickman

Michael J. Mazurczak, BBO #555106

Michael P Dickman, BBO #703367

Melick & Porter, LLP

One Liberty Square, 7th Floor

Boston, Massachusetts 02109

Telephone: (617) 523-6200

Facsimile: (617) 523-8130

maz@melicklaw.com

mdickman@melicklaw.com

Dated: August 16, 2021

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT

GORDON TRAINOR,

Plaintiff,

VS.

C.A. No. 2131CV01178

MICHAELS STORES, INC.,

Defendants.

8/16/2021

RECEIVED

NOTICE OF APPEARANCE OF MICHAEL P. DICKMAN

TO THE CLERK OF THE ABOVE-NAMED COURT:

Please enter the appearance of Michael P. Dickman, on behalf of defendants, Michaels Stores, Inc., in the above-captioned matter.

DEFENDANTS
MICHAELS STORES, INC.
By its attorney,

/s/Michael P. Dickman

Michael J. Mazurczak, BBO #555106

Michael P Dickman, BBO #703367

Melick & Porter, LLP

One Liberty Square, 7th Floor

Boston, Massachusetts 02109

Telephone: (617) 523-6200

Facsimile: (617) 523-8130

maz@melicklaw.com

mdickman@melicklaw.com

Dated: August 16, 2021

CERTIFICATE OF SERVICE

I, Michael P. Dickman, hereby certify that I have, on this day, served a true and accurate copy of the foregoing document via www.efileMA.com, upon the following counsel of record:

Daniel J. Moynihan, Jr., Esq.
Mark A. Russell, Esq.
Law Office of Daniel J. Moynihan, P.C.
271 Main Street, Suite 302
Stoneham, MA 02180

Date: August 16, 2021

/s/Michael P. Dickman

Michael P. Dickman

CERTIFICATE OF SERVICE

I, Michael P. Dickman, hereby certify that I have, on this day, served a true and accurate copy of the foregoing document via www.efileMA.com, upon the following counsel of record:

Daniel J. Moynihan, Jr., Esq.
Mark A. Russell, Esq.
Law Office of Daniel J. Moynihan, P.C.
271 Main Street, Suite 302
Stoneham, MA 02180

Date: August 16, 2021

/s/Michael P. Dickman

Michael P. Dickman